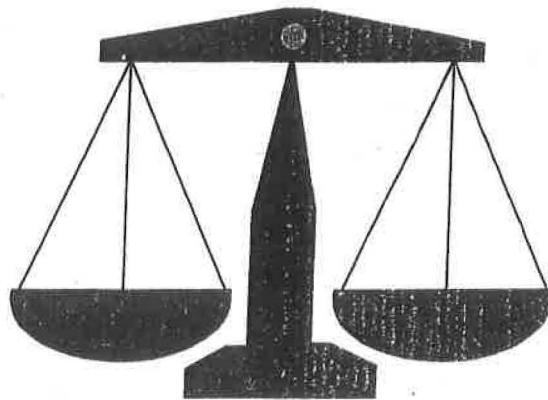




## Ohio Department of Agriculture

# The Rule-Making Process



September 15, 1999

**A GUIDE TO THE RULE-MAKING PROCESS  
OF THE  
OHIO DEPARTMENT OF AGRICULTURE**

**REGULATORY MISSION**

Ohio's Department of Agriculture has regulatory responsibility in four broad areas:

1. Ensuring the safety and wholesomeness of food and food products from production through processing and distribution to the consumer;
2. Ensuring that the goods and services purchased by farmers meet the standards established by law;
3. Ensuring the safe storage, handling and application of agricultural chemicals that can adversely affect the environment; and,
4. Control and eradicate plant and animal diseases that pose a threat to human health and the economic viability of agriculture.

In addition to the foregoing, the Department of Agriculture is responsible for regulating the sealing of weighing and measuring devices used in Ohio, inspection of amusement rides and carnival games, and overseeing the establishment and operation of agricultural commodity marketing and promotion programs.

**DEPARTMENT ORGANIZATION**

The Department has seven divisions which are directly responsible for the development and enforcement of administrative rules applicable to their areas of responsibility. These divisions and their primary areas of responsibility are:

1. **Division of Animal Industry.**

This division is responsible for the enforcement of rules governing the importation and intra-state movement of animals, and the eradication and control of animal diseases. The division also oversees the licensing and regulation of livestock dealers and renderers.

2. **Dairy Division.**

The processing of raw milk into Grade A milk and milk products such as cheese and ice cream is regulated by this division.

3. **Division of Food Safety.**

The inspection of food products, other than meat, poultry, and milk products, from processing through retail sale is carried out by this division. Inspection helps ensure that food products sold in Ohio are safe and wholesome and comply with labeling laws.

4. **Division of Meat Inspection.**

The processing of meat and poultry for food and food products is regulated by this division.

5. **Division of Plant Industry.**

This division is divided into five sections; Apiary, Pesticides, Plant Pest Control, Feed and Fertilizer and Grain Warehouse.

Collectively the first four sections are responsible for the accurate labeling of feeds, fertilizers, pesticides, and nursery stock being offered for sale. They are also responsible for the safe application, storage and handling of pesticides and fertilizers and the control and prevention of pests and diseases affecting both bees and plants. The division's Grain Warehouse section licenses and audits agricultural commodity dealers for financial integrity.

6. **Division of Ride Safety.**

Amusement rides and carnival games are licensed and inspected by this division.

7. **Division of Weights and Measures.**

All weighing and measuring devices used in commercial transactions in Ohio are inspected and tested for compliance with accuracy standards established by rule.

8. **Division of Markets.**

This division oversees the implementation and operation of agricultural commodity marketing programs adopted by farmers. It also manages the Ohio Proud marketing program.

**RULE-MAKING AUTHORITY**

As a state agency the Department of Agriculture does not have inherent authority to adopt rules. Authorization to do so must be expressly granted by the General Assembly and is found in the statutes that create the policies and programs the General Assembly intends the Department to carry out.

It is through rules, which have the force and effect of law, that the substantive details necessary to implement legislation are enacted.

**STEPS IN THE  
RULE MAKING PROCESS AND PUBLIC PARTICIPATION**

**ORIGIN OF RULES**

Rules are adopted by the Department either because they are required by newly enacted legislation or because existing rules, due to fundamental changes in a regulated subject area, no longer effectively implement the intent of the underlying legislation. In the latter case a proposal for rule changes may originate in a division or may come from an interested group outside the Department.

**RULE DRAFTING**

Initially rules are drafted by the division responsible for their enforcement. At this stage the Department has input from a number of different committees, created either by statute or ad hoc, trade associations and public interest groups that are representative of the different interest of people most directly affected by the rules.

**REVIEW AND FILING**

When completed, a draft of the rules is sent to the Department's legal section for review. If the rules are in accordance with law and formatted properly they are proposed for adoption and filed with the Joint Committee for Agency Rule Review, the Legislative Service

Commission, the Secretary of State and the Department of Development's Office of Small Business.

#### **NOTICE AND AGENCY PUBLIC HEARING**

At the time the rules are filed a public hearing is scheduled and notice is published in the Columbus Dispatch. Notice of the hearing and a copy of the rule is also sent to any organizations or persons the Department determines to be directly affected by the proposed rule. Copies of the rule are also sent to anyone who has notified the Department he or she wants to be notified and pays the cost of copying and mailing. In addition to the notices given by the Department, the Office of Small Business publishes a summary of the ruled filed with it and notice of the hearing in its newsletter.

At the Department's public hearing any person affected by the proposed rules may appear, testifying in person or through an attorney, or both, and may present his position either orally or in writing, offer and examine witnesses and present evidence in support of or in opposition to the proposed rule.

#### **PUBLIC HEARING - JOINT COMMITTEE ON AGENCY RULE REVIEW**

In addition to the Department's hearing, the Joint Committee on Agency Rule Review, a permanent legislative committee composed of members from both houses of the General Assembly, holds a public meeting in conjunction with its review of the proposed rules. The Committee's review is to ensure that:

- 1) the rules do not exceed the scope of the rule-making agency's statutory authority;
- 2) the rules do not conflict with a rule of that agency or another rule-making agency;
- 3) the rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed; and,
- 4) the rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission.

The open meetings serve a two-fold purpose. Committee members may question representatives from state agencies about any concerns they have regarding a rule and members of the public have an opportunity to bring any concerns they have to the Committee's attention.

The Committee's meeting dates and the rules on their agenda may be obtained from their website: [www.jcarr.state.oh.us/](http://www.jcarr.state.oh.us/) or by calling them at (614) 466-4086.

### **SUMMARY**

While the Department has a legal duty to implement legislation through the adoption of rules, the Department needs and welcomes input from members of the public who are affected by the rules. Their expertise and perspective help assure the rules will have both a sound factual and legal basis.

Members of the public affected by Department rules may:

- Obtain copies of proposed rules and notice of public hearings by writing the Department and stating the type of proposed rules, by subject matter they wish to receive and paying the cost of copying and postage. Requests should be sent to:

Ohio Department of Agriculture  
Legal Section / Rules  
8995 East Main Street  
Reynoldsburg, Ohio 43068

- Participation in the rulemaking process:

Indirectly - Through their representatives in various trade associations, boards and commissions and interest groups which help the Department formulate rules.

Directly - By testifying at the public meetings held by the Joint Committee on Agency Rule Review.

- By testifying at the public hearings held by the Department.



## **Ohio Department of Agriculture Rule Filing Process**

This document is a step by step guide to file any administrative rule within the Ohio Department of Agriculture. If you have any questions along the way either contact David Miran at 585.455.7658 or the ERF help desk at 614.387.2078.

### **Before you start.**

Prior to starting this process, you will need to do several things in order to get started. First, the state of Ohio utilizes the Rule Authoring Software (RAS) program to draft rules. A copy can be obtained from the Register of Ohio at <http://filers.registerofohio.state.oh.us/jsp/RASversion.jsp>. Secondly, you must request access to the Electronic Rule Filing program through the ERF/LSC help desk which can be reached at XXXX. Additionally, you must request access to the eNotification system through Paula Steele at Governor's Office. She can be reached at XXXX. Finally, you will need to make an IT helpdesk request to load the ODA console onto your computer with access to the Laws and Rules website page.

### **The Legal Drive.**

All administrative rules files are housed under the Legal Drive (L Drive), more specifically under the Administrative Rules folder. The folders below are contained within the Administrative Rules folder. Please use the folders as they are described.

Pre File: Contains all rule packages prior to filing with JCARR.

Pre-CSI: Contains all rule packages prior to filing with CSI.

Long-Term Storage: Contains all rule packages that have been put on hold.

CSI-Pending: Contains all rule packages which are awaiting CSI's recommendations.

Filed: Contains all rule packages which have been filed with JCARR.

2014 Rules: Contains all files that have completed the JCARR process in 2014.

Rule Docs: Contains templates, samples, and any document that can help you with rule filing.

Rule Books: Contains "books" which are made up of each division's rules in one handy pdf.

### **Request rules to be downloaded from LSC.**

The RAS program utilizes Extensible Markup Language files (.XML) to draft and maintain rules. The only place to obtain these files is through the Register of Ohio website here: <http://www.registerofohio.state.oh.us/RuleRequest/jsp/chooseOption.jsp>. LSC requests that you allow them 30 days to prepare the rule for downloading. This process normally does not take the full 30 days however; it usually takes a week or so, so plan ahead before filing.

Many of the rules will likely be already downloaded. *More likely than not this will be an old version of the rule.* Only by deleting the old request can you download the new version of the rule. To do so, go to the site listed above. Click on "Change rule filing schedule." Enter 901 for the Agency Number. Enter the division number you are working on. After this you should be able to delete all the rule requests that you are about to make.



Failure to request the most recent rule will mean that changes that already have been made to the rule will be missed, and LSC will question why you don't have the most current rule. **This will not look good.**

#### **Download rules from LSC.**

After waiting a few days go back into the Register of Ohio and download the rules. Microsoft keeps the rules in the Downloads folder so be sure to create a folder in the Administrative Rules folder in the L Drive.

Remember, as stated above, place these files under the Pre-File, Pre-CSI folder.

#### **Draft or Amend rule using RAS program.**

After meeting with the respective Division, you will be ready to draft or amend the rules. All rule drafting is done using the RAS program. In order to become a skilled rule draft it is best to take a course put on by LSC and JCARR. These training courses are held on a monthly basis. Contact the ERF helpdesk to be added to the email list for training times or to be added to the next training.

Note that LSC and JCARR each have style manuals that are very specific, some may say asinine, on how rules are drafted, including when you have to delete the whole word versus editing a word, deletion of a period, use of bullet points and indentations, etc. The LSC style manual can be found at [http://www.lsc.state.oh.us/rules/rdm06\\_06.pdf](http://www.lsc.state.oh.us/rules/rdm06_06.pdf) . The JCARR style manual can be found at <http://www.jcarr.state.oh.us/for-filers/procedures-manual>. If you have any questions do not be afraid to give them a call.

Once drafted, make sure to save your work. **Clicking the save button here will only save it on RAS.** You will need to 'Save As' in the folder you've created in the Pre-File, Pre-CSI folder. Additionally, under the File tab, make sure to Export your rule to a RTF file. You will use these RTF files below.

#### **Determine if the rule has an adverse business impact.**

In 2010, Governor Kasich created the Common Sense Initiative office "to create a regulatory framework that promotes economic development, is transparent and responsive to regulated businesses, makes compliance as easy as possible, and provides predictability for businesses." This office requires Agencies to examine their proposed rules to see if they have any adverse business impacts. Section 107.52 of the Revised Code states:

A draft rule that affects businesses has an adverse impact on businesses if a provision of the draft rule that applies to businesses has any of the following effects:

- (A) It requires a license, permit, or any other prior authorization to engage in or operate a line of business;
- (B) It imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action, for failure to comply with its terms; or
- (C) It requires specific expenditures or the report of information as a condition of compliance.

A vast majority of the rules will be considered to have an adverse business impact. An example of a rule that does not have an adverse business impact is those that regulate meeting requirements of advisory boards.



**Draft Business Impact Analysis.**

If the rules have an adverse business impact, a business impact analysis (BIA) must be created. The CSI website (<http://www.governor.ohio.gov/PrioritiesandInitiatives/CommonSenseInitiative.aspx>) and the Rules Doc folder have blank version sand copies.

If the rules do not have an adverse business impact then you can skip drafting the BIA. This is the *exception* to the general rule. Contact CSI to get their opinion prior to going this route.

While drafting the BIA, you will likely have to contact the Division the rule is for regarding a number of items. When initially speaking with the division regarding the rule(s), it is a good idea to get the full reason why the changes are being made, and if any alternatives were considered. You will also need to know what the rule approximately costs a business, e.g. the cost of a permit, inspections, and the cost of building materials for a cage, and also how the new changes will affect the cost. Only the Division can provide this information.

You should also inquire on how they plan to communicate these changes / implement these changes with the regulated community. In addition, you need to ensure that once the Division is satisfied with the rules that the Division has sent the rules out to their "stakeholders" for input or questions. This would be their advisory board, or if no board or commission is available, well-known individuals in the community. Once the Division has contacted the stakeholders and has satisfied their concerns or questions, obtain a list of who they contacted and insert this into the BIA for contact with the community.

Please note that ODA tends to use stock language that is generally approved by CSI. It is recommended that you review the L Drive to review similar BIAs for the language. If you have questions during the BIA process, ODA has an analyst that we work with at CSI, Sean McCullough. Mark Hamlin is Sean's boss and is also a good point of contact if Sean is unavailable. Both can be reached at the contact information below.

Note: Each rule does not have to have an individual BIA. However, logical groupings must exist. General rule of thumb is to group them by OAC chapter.

Example:        901:10-1.

Not:            901:10.

**Place rule documents online using ODA console.**

Prior to submitting the rules to CSI and the public place the rules on the Department's website using the ODA console. ODA console can be found in your programs under Ohio Department of Agriculture.

It is best to save all documents as PDFs from this point on.

The documents that need to be uploaded to the ODA console are: the Rules (in one PDF document), BIA, and a Web Synopsis. A copy of a sample web synopsis can be found on the L: Drive under Administrative Rules/Rules Documents. To complete it, simply enter introductory information at the top and copy and paste the information placed in paragraph 1 of the BIA.

The rules should be saved as one PDF document. Open the RTF files that you have saved for each rule and simply copy and paste.

#### **eNotify the rules.**

Once all the requisite documents have been placed on the ODA website the rules must be eNotified. This process sends out information to individuals interested in the rule. It also sends the rules to CSI. It's a good practice to contact CSI prior to filing to give them a heads up.

To e-notify the rule go to this site: <https://oitportal.ohio.gov/sites/RegReform/default.aspx> This site is a very fickle, old, and difficult site. It has only worked for me on Internet Explorer. It is best to have all information ready prior to attempting to eNotify.

#### **Step by Step Instructions:**

1. Click AGR in the top left corner.
2. Select Create Package Notification (Note: Do this even for single rules.)
3. Enter the information required.
4. Always select Package as the type of eNotification.
5. The Date of eNotification is always the day you are filling out the information. **If you put any other date it will not work!**
6. **Do not enter a time! It will not work if you do.**
7. The comment period ends 15 business days from today.
8. The hyper link for more information is: <http://agri.ohio.gov/proposedrules/proposedrules.aspx> (This is where the documents go when you use ODA console.)
9. **SAVE BEFORE CONTINUING TO STEP 2.** It will not work unless you do this step.
10. Step 2 requires you to input information into a table provided. A copy of this table can be found in the L: Drive under Administrative Rules/Rules Documents. If you have several rules it is best to fill it out prior to this step.
11. Once complete press Save Rule Package. An email should be sent within the next five minutes. If an email is not sent in the next 30 minutes it is likely something went wrong. Either attempt again or call the ERF help desk.

#### **Public Comment Period.**

The public comment period lasts for 15 business days. Monitor to the Legal Inbox and the eComments inbox for any comments. If any comments are received be sure to communicate them to CSI and to the Division involved. There is a possibility that based on feedback that the Division would like to change the rule. If so, then any change may be incorporated, but also must be included in the ODA response to CSI, which is below.

Note: If it was decided that no BIA was necessary you can skip the next two steps and head straight to the File with JCARR notes.

**CSI Recommendation.**

Sometime after the public comment period has ended, CSI will submit their recommendations to the Department regarding the rule package. 99% of the time the recommendation will be to proceed to file with JCARR.

CSI can take up to two months to get back to you. This time must be calculated into your schedule accordingly.

**ODA Response.**

Once CSI's recommendation has been received, ODA must respond. A sample ODA response letter can be found on the L: Drive under Administrative Rules/Rules Documents. The response letter may be emailed to Sean McCullough, or whichever analyst you have been working with, at CSI.

***Do not file with JCARR prior to sending the ODA response to CSI.***

**File with JCARR.**

If all the above steps have been completed, you may file with JCARR. To do so you must use the ERF website here: <http://filers.registerofohio.state.oh.us/>. As mentioned above, ERF provides training on a pretty regular basis. It is important that you do this training prior to filing.

To file with JCARR you will need the following documents and information ready:

1. Rules in XML form
2. BIA
3. CSI recommendation
4. ODA response
5. Public Hearing Notice (if the rules are amended)
6. Prior History of all rules.
7. Statutory Authority
8. Statutes which the rules amplify

Filing with JCARR is on a rule by rule basis. There are nearly twenty questions to be answered in each rule. Many of the answers are the same so a trick is to open up multiple windows and copy and paste the information.

**Public Hearing.**

If the rules are being amended, then a public hearing must take place. This public hearing must be held within 31 to 40 days of the JCARR filing date. The public hearing notice should be placed on the ODA proposed rules page. Additionally, forward the public hearing notice to Communications so they may put it on the ODA calendar.

For the public hearing, print out witness slips in case individuals attend the hearing to testify. Additionally, create a document for your opening remarks. Samples can be found on the L: Drive under Administrative Rules/Rules Documents.

The document for opening remarks is important to state that you opened the hearing for remarks, to set boundaries on what may be discussed and for how long, and that there will be no response from the ODA representative or discussion of the rules. Witness slips must be filled out to document who testified.

The public hearing must be recorded. For a majority of the hearings a smart phone will suffice. If the rules are controversial it may be best to contact a court reporter. If you have witnesses who testify should have the hearing transcribed. A copy of the hearing remarks as well as any written comments sent in must be sent to JCARR, care of Deputy JCARR Director Greg Fouche, to alert them to any issues.

**JCARR Hearing.**

The JCARR hearing will be held between the 41<sup>st</sup> and the 65<sup>th</sup> day of filing. The hearings are downtown in the statehouse. Contact either Celia or Connie for use of a state car and the statehouse parking pass. Always bring the Division Chief or individual you worked closely with on the rules with you. There is a potential that the members of JCARR may have questions for you. Bring your file!

Be sure that you have contacted Whitney Paterson with JCARR to inform her that you are the contact person for these rules if David will not be around for the hearing. Additionally, you should ask Whitney to add you to the mailing list for JCARR (or go on the JCARR website) so you are apprised of when AGR rules are scheduled for hearing, and Whitney knows to call you if they know there will be testimony on your rules.

**Final File.**

Rules may be final filed on the 66<sup>th</sup> day of filing. Statute requires at least ten days between final filing and effective date, but no upper limit is set, so the earliest the rules may be effective as early is day 76. After the rules become effective, be sure to remove all posted rules, ODA web synopsis, and public hearing notices for the rule that is now final from the ODA website.

Be sure to update the Master Spreadsheet found in the Rules Docs folder if this was a five year rule review. It is also a good opportunity to review what rules are coming due for 5 year reviews.